

**Brookline Board of Appeals
February 26, 2015, 7:00 PM
Public Hearing**

**333 Washington Street
Selectmen's Hearing Room, 6th Floor**

Board Members Present: Mark Zuroff (Chairman), Christopher Hussey, Avi Liss

Staff Present: Michael Yanovitch (Building Department), Jay Rosa (Zoning Coordinator)

1471 Beacon Street

Proposal: Construct a four-car parking area at the rear

Zoning District: M-2.5 (Apartment House)

Precinct: 10

Board Decision: Relief request **granted**, subject to conditions

66 Perry Street

Proposal: Construct an addition at the rear of the property that includes expanded living space and an attached three-car garage

Zoning District: T-5 (Two-Family and Attached Single-Family)

Precinct: 7

Board Decision: Relief request **granted**, subject to conditions

Minutes shall be posted on the Town of Brookline website (<http://www.brooklinema.gov/564/Zoning-Board-of-Appeals>) upon approval. Draft minutes shall be made available upon request.

Decisions shall be posted on the Town of Brookline website (www.brooklinema.gov). Appeals, if any, shall be filed with land court or superior court within twenty days after the date of filing of such notice in the office of the town clerk.

**Brookline Board of Appeals
February 12, 2015, 7:00 PM
Public Hearing**

**333 Washington Street
Selectmen's Hearing Room, 6th Floor**

Board Members Present: Mark Zuroff (Chair), Christopher Hussey, Avi Liss

Staff Present: Michael Yanovitch (Building Department), Jay Rosa (Zoning Coordinator)

7:00 PM

1471 Beacon Street – Construct a 4-car parking garage at the rear

Board Chair Mark Zuroff opened the hearing and called case# 2014-0070.

Mr. Zuroff reviewed standard hearing procedure.

The applicant's attorney, Robert Allen (300 Washington Street), waived the reading of public hearing notice for the record and introduced property owner Jeffrey Feuerman and project architect David O'Sullivan.

Mr. Allen stated that 1471 Beacon Street is located within an M-2.5 (Apartment House) residential district. The apartment building was significantly renovated in 2012 following a fire. Special permit and variance relief from the Zoning Board of Appeals was also granted to initiate the project.

This rear parking proposal has been modified following Planning Board meetings. Plan alterations included a reduction from 5 to 4 garage parking spaces, a landscaped roof above the garage, and the removal of garage doors.

Architect, David O'Sullivan described the project in further detail. The parking area will be located behind the 1471 Beacon Street apartment building in an area that is currently a sloped hillside. Vehicular access to this location is provided by a right-of-way alleyway with ingress and egress at Beacon Street to the west of the subject property. Two open bays provide enough space for four parked vehicles (9'6"x16' parking spaces). These wider spaces are intended to improve turning radii in an effort to avoid crossing over private property on the opposite side of the right-of-way upon entering and exiting the garage. Garage roof plantings will mitigate water runoff, comply with required landscaped open space, and serve as a visual counterbalancing amenity.

Board member Christopher Hussey requested additional detail regarding the proximity of an existing retaining wall to the right-of-way, and the elevation of the parking surface as it relates to existing area parking.

Board Chair, Mark Zuroff, requested additional drainage detail, specifically the capacity of an existing drywell to handle water runoff.

Mr. O'Sullivan submitted a full size site plan to the board for context. Mr. Allen stated that the applicant intends to meet with representatives from the engineering department regarding drainage at the site. Relocation of the existing drywell was mentioned as an option. If the project is

granted necessary relief, the engineering department must approve drainage plans prior to the issuance of a building permit.

Mr. Hussey requested addition detail regarding right-of-way dimensions. Assessor's maps indicate that the right-of-way appears to be interrupted by the building at 1477 Beacon Street. Mr. Hussey conducted a site visit and confirmed that vehicles must navigate around this structure in traveling east along the alleyway.

Mr. Allen submitted historic easement documents provided by the Norfolk Registry of Deeds. Mr. Allen stated that alleyways are common along Beacon Street, however this location is unique because the alleyway is a dead end just east of the subject property and a private entry point to the rear parking areas is located on Griggs Terrace. Residents of 1471 Beacon Street do not have legal access to this Griggs Terrace entry point.

Mr. Zuroff questioned how the alleyway is currently maintained (snow removal, paving, access enforcement).

Mr. Allen stated that residents informally maintain rear parking areas and enforcement of legal use of the Griggs Terrace access point is not a zoning issue. Additionally, parking spaces were reduced in order to avoid crossing the alleyway onto the private property of Griggs Terrace residents. Mr. Allen also acknowledged that prior demolition and rehab of the property did result in construction vehicles and storage utilizing private Griggs Terrace property.

In Mr. Allen's opinion, this proposal is worthy of special permit relief as it complies with conditions outlined in bylaw section 9.05. Adequate landscaped open space is also provided on the property according to Mr. O'Sullivan (2,601 sf).

Mr. Zuroff called for any public comment in favor of the project. No members of the public wished to speak in favor.

Mr. Zuroff called for public comment in opposition of the project.

Bob Townsner (6 Griggs Terrace) reiterated that the applicant had not been communicative with abutting residents, frequently blocked the right-of-way during previous construction work, and construction vehicles illegally used the Griggs Terrace entryway. Mr. Townsner expressed concern that the applicant has not followed previously established permit conditions and the responsibility to enforce these issues has been placed on abutting property owners. This is an unfair burden in Mr. Townsner's opinion. Mr. Townsner felt that the location of the garage on the hillside will generate flooding problems and serves as a threatening precedent. Residents along Beacon Street will invariably use the Griggs Terrace entry point because it is closer, wider, and less steep than the Beacon Street access point, to which 1471 Beacon Street residents do have legal access to. All of these issues represent a nuisance to the Griggs Terrace abutters.

Mr. Zuroff and Mr. Hussey both questioned if a solution to prohibit 1471 Beacon Street residents from using the Griggs Terrace access point exists. Mr. Townsner responded by stating that the applicant has been unresponsive to any efforts to reduce illegal use of the Griggs Terrace entry point. Mr. Zuroff and Mr. Hussey both agreed that a conditioned construction management plan is important in minimizing illegal entry during construction but it is difficult to enforce illegal access long term.

David Eckel (11 Griggs Terrace) stated that two issues exist for Griggs Terrace abutters. There is a history of the applicant trespassing on private property and the applicant has not followed through in agreements made to abutters, particularly during construction. Mr. Eckel submitted a turning radius diagram that depicts vehicles crossing over the legal right-of-way to access proposed parking spaces. If this issue is not resolved, the project cannot go forward in Mr. Eckel's opinion. Mr. Eckel also stated that private property was used as a staging area during previous construction at the site.

Ron Garonzik (9 Griggs Terrace) stated that the developer has made a gamble during this renovation and has intended to create rear parking since the project initiated in 2012. Mr. Garonzik felt that the applicant has intended to "wear down" abutters and re-orient the apartment building toward Griggs Terrace. Mr. Garonzik believed that if this project is approved, Griggs Terrace residents will face a parking lot in their rear yards.

Greg Lopiccolo (6 Griggs Terrace) stated that turning radius diagrams submitted by both the applicant and abutters depict vehicles crossing over the right-of-way onto private property.

Mr. Zuroff reiterated that if the project is approved, it in no way grants rights over Griggs Terrace properties.

Mr. Allen stated that the debate at hand concerns application of zoning regulations as opposed to property rights. Mr. Allen recognized the frustration of the abutters, and stated that this garage proposal is intended to provide clean and organized parking in an area that is often unclear. Additionally, these parking spaces will be deeded to property owners who will be neighbors with the Griggs Terrace residents.

Mr. Zuroff considered various options to include permit conditions that restrict illegal use of Griggs Terrace property. Clear regulations may also be included in condominium documents and parking space deeds as well.

Board member Avi Liss agreed with abutters that enforcement of legal use of the alleyway is unfairly placed on the abutting residents as opposed to the applicant. Mr. Liss stated that the applicant should consider strategies to alleviate these concerns, specifically the financial cost associated with enforcement. Mr. Liss also suggested that the Griggs Terrace residents consider establishing a legally recognized neighborhood association.

Mr. Zuroff called upon Jay Rosa to deliver the opinion of the Planning Board. Mr. Rosa stated that the Planning Board voted 3-2 to recommend approval of the rear garage area. Board members in favor cited overall property improvements and a more feasible project (structurally and turning radius) as a result of the reduction to 4 parking spaces. Board members in opposition did not feel that the project met qualifications for a special permit as outlined in Bylaw Section 9.05 due to adverse impact on abutters and an inappropriate location to site such a garage.

Therefore, the Planning Board voted (3-2) to recommend approval of the parking facility plans by O'Sullivan Architects, Inc., dated 2/10/15, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations, indicating all dimensions and materials, including an exterior treatment for the walls other than blank concrete, subject to the review and approval of the Assistant Director of Regulatory Planning.

2. Prior to issuance of a building permit, the applicant shall submit a circulation plan for the parking area, subject to the review and approval of the Director of Transportation and Engineering.
3. Prior to the issuance of a building permit, the applicant shall submit a final landscape plan, stamped and signed by a registered landscape architect, indicating substantial counterbalancing amenities, subject to the review and approval of the Assistant Director of Regulatory Planning.
4. Prior to issuance of a building permit, the applicant shall submit a construction management plan for the garage, subject to the review and approval of the Building Commissioner.
5. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Mr. Zuroff called for Interim Chief Building Inspector, Michael Yanovitch, to deliver the opinion of the Building Department. Mr. Yanovitch stated that the conditions of 9.05 have been met and exceeded with this proposal. The existing parking along both the Beacon Street and Griggs Terrace right-of-ways are inconsistent and unorganized. Many residents park illegally in this area, and the area has been visited by representatives from Fire, Police, and Building Departments. Enforcement remains challenging because the area is largely private property. Prior improvements to the structure did result in parking overflow and illegal use of the Griggs Terrace access point, to which the Building Department responded and enforced compliance with permit conditions. If necessary special permit relief is granted, the building department will be vigilant during construction. Additionally, the Engineering Department is aware of drainage issues on the sight and must sign off on any drainage plans prior to the issuance of a building permit.

Board Deliberation

Mr. Hussey acknowledged that most alleyways along Beacon Street are not accurately delineated. He did state that a temporary fence may be included in construction management plans to block illegal vehicle access to the rear of 1472 Beacon Street.

Mr. Liss agreed that the garage proposal meets the conditions of Bylaw Section 9.05 and serves to organize more of the large parking area between Beacon Street and Griggs Terrace. Mr. Liss felt that enforcement moving forward is the primary issue to be fleshed out in the final written decision and permit conditions.

Mr. Zuroff concurred that the requirements for special permit relief had been met. Mr. Zuroff stated that conditions must be imposed on the developer during construction and on future property owners to enforce compliance and fund necessary enforcement if needed. Mr. Zuroff agreed to work closely with Mr. Allen to draft a decision that includes such enforcement language.

Unanimous grant of requested relief, subject to conditions in the record, and amended to include appropriate enforcement of legal use of the rear alleyway.

66 Perry Street – Construct a two-story rear addition that includes expanded living space and an attached 3-car garage

Board Chair Mark Zuroff called case #2014-0074 and reviewed standard hearing procedure.

The applicant's attorney, Scott Gladstone (1244 Boylston Street), waived a reading of public hearing notice for the record and introduced property owner Luis Diazgranados (DreamBlue LLC).

Mr. Gladstone stated that the applicant has been responsive to a variety of input over the course of a lengthy public process. This is the first project to proceed through the Neighborhood Conservation District Commission. The building permit was applied for prior to district implementation but the applicant has subjected the project to district review.

Mr. Gladstone described the 66 Perry Street property as an historic home with a large front-yard setback. The lot is underdeveloped, as there is a permitted floor area ration of 1 for the T-5 residential district.

The applicant originally proposed a by right addition at the front of the existing structure. This violated NCD guidelines and the addition was subsequently shifted to the rear of the lot. The NCD review process concluded by further reducing the massing at the rear of the lot (second story bedroom converted to a porch). This NCD approved plan triggered the need for zoning relief from rear-yard setback requirements. Planning Board recommendations resulted in the final plan before the ZBA that includes a further reduction in the size of the proposed addition (rear carport, minimal second story porch, and reconfigured HVAC equipment).

The as-built project results in a .65 FAR. Counterbalancing amenities for special permit relief include the aforementioned reduced rear massing, a rear stockade fence, rear arborvitae, removal of trees that overhang the rear parking lot (33-39 St. Paul), and the decommission of an existing driveway along the eastern property line.

Mr. Gladstone also informed the Board that a formal agreement has been reached between the applicant and the residents of 33-39 St. Paul Street to maintain an easement for shared use to access 66 Perry Street and 33-39 St. Paul Street parking spaces.

Although the 5-10 foot proposed setback requires relief, the property abuts a large surface parking area that spans nearly 90ft before reaching 33-39 St. Paul Street residential dwellings.

Mr. Gladstone concluded his comments by reviewing requested modification of a 1976 special permit that established 66 Perry Street as a single family home. Mr. Gladstone explained that this provision was essentially created to deter demolition of the historic structure. Additionally, the property was illegally used as a two-family dwelling for several years according to the prior property owner. The property is located in a zoning district that permits two-family uses.

Mr. Zuroff called for any public comment in favor of the proposal.

Ed Bonfillio (7 Perry Street) stated that he has appreciated the public participation that has accompanied this proposal. Mr. Bonfillio felt that the current plan before the Board is an excellent project that is appropriate for the neighborhood.

Godfrey Helldbrandt (64 Perry Street) commented that the lengthy permitting process perhaps has worn out abutters in opposition of this proposal. Mr. Helldbrandt agreed that the project has improved through various review but does not necessarily represent compromise. Additionally, there has been a gap in public debate regarding the formal conversion to a two-family dwelling in Mr. Helldbrandt's opinion.

Cameron Merrill (Merrill & McGreary – 100 State Street Boston, MA) requested that the easement agreement between the ST. Paul Village Condo Association and the 66 Perry Street property owner be include in written record and the final Board decision.

Mr. Zuroff requested that Jay Rosa deliver the opinion of the Planning Board. Mr. Rosa stated that the Planning Board unanimously supported this iteration of project plans. The applicant has been responsive to various inputs from the NCD, the Planning Board, and abutting residents. Rear massing has been reduced and the historic front yard/façade has been largely maintained. The project also remains well below the allowed FAR for the district.

Therefore, the Planning Board recommends approval of the plans submitted by ARCO design & build, dated 1/8/15, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall provide evidence that the final elevations, site, utility locations, and landscaping plans conform to all of the conditions in the Certificate of Appropriateness, dated 10/22/14, to the Assistant Director for Regulatory Planning.
2. One of the two dwelling units shall have no more than two bedrooms.
3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Mr. Zuroff requested that Interim Chief Building Inspector, Michael Yanovitch, to deliver the opinion of the Building Department. Mr. Yanovitch stated that the Building Department has no objection to the project. There has been thorough review and non-compliance with rear-yard setbacks is a direct result of NCD recommendations. Additionally, the single-family use condition runs with the property unless modified – which is a request before the Board. If the proposal is granted necessary relief, the Building Department intends to work with the applicant to ensure compliance with all building codes.

Board deliberation

Board Member, Christopher Hussey questioned the reasoning behind condition #2. Mr. Gladstone confirmed that the two bedroom requirement must be maintained to comply with parking requirements (4 total parking spaces).

Avi Liss commented that this is a lovely project that has been achieved by thorough public participation. The impacted parties have worked well together to compromise on design/massing. Mr. Liss stated that the conditions for special permit relief have been met under Bylaw Section 9.05. Mr. Hussey concurred with this opinion.

Mr. Zuroff commended the applicant for being patient through multiple project reviews. This preservation and upgrade of beautiful old homes is encouraged in Brookline. Mr. Zuroff concurred that the conditions for special permit relief had been met and also felt that there is no overwhelming reason to maintain the single-family condition.

Unanimous grant of requested relief, subject to conditions included in the record with updated Certificate of Appropriateness date as required.

Unanimous approval of 2/12/15 draft hearing minutes.

Hearing closed.